

MEMORANDUM

July 22, 1978

Yesterday I conferred with Raymond Fick and Wilma Ames. It is apparent that Mrs. Ames has done a lot of investigative work. She apparently has obtained from the state engineer's office a list of the acre feet of water usage on which the assessment roll is based. She states that it almost uniformly shows between four and five hundred^{d acre feet of water}~~ths~~ of annual usage. The water right in question is found on page 8 of the Cox Decree under the heading, "South Fork of Sevier River, Piute County, Third Class Rights." Mr. Fick claims under the right designated as belonging to "Mrs. Thomas Dobson." There appear to be two rights involved, i.e., 1.39 c.f.s. and .50 c.f.s. The decree provides that each class of rights shall have precedence over the other and that the rights within each class shall be administered pro rata. However, Mrs. Ames advises me that they have diverted the water which they claim they are entitled each and every year without regard to whether or not the other two classes of water were satisfied and without regard to the fact that the decreed provision indicates that Mr. Fick is only entitled to a part of the decreed rights referred to.

Page 29 of "Bacon's Bible" indicates that Whittaker Bros. and Mrs. Thomas Dobson were entitled to 2.08 c.f.s., 1.39 c.f.s from May 1 to October 15 to irrigate 83.2 acres of land belonging, 34.5 to Mrs. Dobson and 48.7 to J.C. and Arthur Whittaker and further provided that the water was to be pro rata for periods of time in the proportion that their respective acreage bears to the whole acreage. There is also awarded to the parties, .50 c.f.s. for stock watering of 80 head of horses and cattle. No mention is made of how such stock watering was to be divided and I am assuming that the intention was one-half to each. The water right is represented by Claim no. 94--diversion no. 107 found on plat~~te~~ no. 197 of the maps prepared by Engineer Bacon.

In the "Cox Decrees Proposed Findings", page 27, Circleville Irrigation Company, et al, are given 30 c.f.s of third class water and Whittaker Brothers and Mrs. Thomas Dobson are given .50 c.f.s.

with a period of use from April 1 to November 15. Attached to this memorandum is an objection to such proposed findings for the reason that 2.08 c.f.s. and the 1.39 c.f.s. from April 1 to October 15 was omitted. The person objecting was Mrs. Hazel W. Cannon and she alleged that she and Mrs. Dobson were entitled to use the water on a pro rata basis and that they had done so for more than 40 years. Also attached is an order of the court showing that Mrs. Cannon's attorney stipulated with the Circleville Irrigation Company that Mrs. Cannon was entitled to 1.39 c.f.s. from April 1 to November 1 of each year on a pro rata basis with Mrs. Dobson and provided that such amount be deducted from the 30 c.f.s. awarded to the Circleville Irrigation Company. Mrs. Dobson was not a party to the stipulation, although the effect of the stipulation seems to delete the claimed 2.08 c.f.s. The order is reflected in the printed copy of the "Cox Decree", i.e., the 1.39 was subtracted from the rights of the Circleville Irrigation Company and 1.39 was awarded to Mrs. Cannon and Mrs. Dobson.

Also attached are copies of pages 19 and 20 from the 1949 Sevier River Annual Report. The pages are copies of an agreement that was never signed, instructing the Sevier River Water Commissioner to deliver .25 c.f.s. of water to the Dobson right and .62 of the Cannon right. There is a statement signed by Lerue Ogden that he had divided the water and the state engineer had levied the assessment according to the division set out in the agreement from August 9, 1935 to January 10, 1950. As previously indicated, Mrs. Ames states that Mr. Ogden's allegation that the assessment had been levied by the state engineer did not reflect any such division, but that such assessment records indicate a much greater quantity of water had been used.

It may be that the Cannon property is being irrigated with water rights claimed under the Circleville Irrigation Company. At least Mrs. Ames states that it is not being irrigated with any part of the 1.39 c.f.s. and has not been so irrigated since the entry of the decree.

Scott Smith, who is the Sevier River gate man as well as an officer of the Circleville Irrigation Company has told Mr. Fick

that .25 is all of the water that he is entitled to and that if he makes a claim for more, he will receive nothing. ^x It seems to me that Mr. Fick is entitled to his pro rata share of the 1.39 and .25 of the stock watering right. Possibly using the assessment roll records in the state engineer's office, a claim to all of the 1.39 might be made on the basis that the continued use of the full amount since the entry of the decree indicated that this was the interpretation placed on the decree by the parties.

I recommended that Roger Walker investigate the matter and that a report be made to me so that I could advise Mr. Fick of my opinion as to what rights to the use of water he did have. It is recommended that Roger contact Mrs. Ames and obtain copies of all documents that she has obtained and that he then talk with Scott Smith. It also appears that copies of the water users claims should be obtained from the court records at Fillmore and that the Cox Decree files be checked to see if any other documents of value are available.